FRANCIS PHILLIP NUNIS

v.

PUBLIC PROSECUTOR

FEDERAL COURT, PENANG
RAJA AZLAN SHAH CJ (MALAYA)
EUSOFFE ABDOOLCADER J
GUNN CHIT TUAN J
[CRIMINAL APPLICATION NO. 2 OF 1982]
12 APRIL 1982

CRIMINAL PROCEDURE: *Reference to Federal Court - Whether mere question of principles would be a question of law of public interest - Construction of the words "or other advantage" - Meaning of "corrupt practice".*

The question referred to the Federal Court under s. 66(1) of the Court of Judicature Act 1964 is one of construction of the words "or other advantage" in s. 2(2) of the Emergency (Essential Powers) Ordinance 22/1970 and in particular whether it refers only to some form of property, either moveable or immoveable, corporeal or incorporeal.

The applicant, then the state fire chief, Penang who was charged at the Sessions Court, Penang under s. 2(1) of the Emergency (Essential Powers) Ord. 22 of 1970 was acquitted by the learned President. On appeal by the learned DPP to the High Court, the learned Judge set aside the order of acquittal and substituted an order of conviction and sentenced the appellant to 2 years' imprisonment. Hence, the reference.

Held:

[1] For leave to be granted, it is necessary that the question posed is a question of law raised in the course of the appeal to the High Court and is of public interest.

[2] Mere question of principles involving the construction of certain words in a statutory provision would not be a question of law of public interest as in the instant application.

[3] The question raised is not one of law of public interest and therefore the application is dismissed.

[Application dismissed.]

Legislation referred to:
Courts of Judicature Act 1964, s. 66(1)
Emergency (Essential Powers) Ordinance No 22,1970,s. 2(1),(2)

For the applicant - R.R. Chelliah (K. Balasundaram with him)
For the respondent - A. Khalid bin Abdul Manaf, DPP

JUDGMENT

The only question Counsel for the applicant concedes he is asking for leave to refer to this Court under s. 66(1) of the Courts of Judicature Act 1964 is one of construction of the words "or other advantage" in s. 2(2) of the Emergency (Essential Powers) Ordinance No. 22 of 1970, and in particular whether it refers only to some form of property, either moveable or immoveable, corporeal or incorporeal.

The brief facts of the matter are that the applicant, the Penang state fire chief recommended to the Chairman of the Lembaga Pengurus Kerajaan Tempatan, two sets of resuscitators and two spare oxygen cylinders to be purchased from Simon Enterprise, a firm wholly-owned by his brother-in-law, at a price of RM3,800 when it was established that it could have been purchased at a much lower price direct from Far East Oxygen Sdn. Bhd for RM2,600 and as a result of which, Simon Enterprise made a profit of RM1,200. He was charged under s. 2(1) of the Emergency (Essential Powers) Ordinance No. 22 of 1970 and was acquitted by the President of the Sessions Court, Penang. On appeal Abdul Hamid, FJ set aside the order of acquittal and substituted an order of conviction and sentenced the applicant to two years imprisonment. The case turned on the connotation of the words "or other advantage" under s. 2(2) of the said Ordinance which reads as follows:

> 'corrupt practice' means any act done by any member or officer referred to in sub-section (1) in his capacity as such member or officer, whereby he has used his public position or office for his pecuniary or other advantage; and without prejudice to the foregoing, in relation to a member of state legislative assembly includes any act which is contrary to the provision of sub-section (8) of s. 2 of the eighth schedule to the Federal Constitution or the equivalent provision in the constitution of a state;.

The learned Judge construed the words "or other advantage" widely having in mind two decisions of this Court, namely: (1) *Public Prosecutor v. Datuk Tan Cheng Swee & Ors*. [1979] 1 MLJ 166, 178 and (2) *Haji Abdul Ghani bin Ishak & Anor. v. Public Prosecutor* [1981] 2 MLJ 230, 243. We reproduce two passages from his judgment which we consider as apt and correct:

> There is to my mind no mystery in the word "advantage". The expression is to be construed widely to include a benefit or gain of some kind other than pecuniary. If a public officer abuses his public position to advance a private or personal interest whereby it is accrued to him either a pecuniary gain or benefit or something which is personally beneficial to him even though someone else may derive direct benefit from it, that advantage is, in my view, the kind of advantage that the legislature has in mind.
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> .....
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> It is clear from the evidence that the respondent abused his public position when he assisted or gave aid to his brother-in-law. It was beneficial to him personally that by so doing he could provide benefits to close members of his family. It was undoubtedly a comfort to him to be able to effect financial gain to them or their company. To my mind, an act on the part of the respondent was an act of showing favour to his sister's husband or the brother-in-law to effect financial advantage to him.

We should also observe that the learned Judge had earlier remarked in his judgment that the totality of the evidence clearly shows that the applicant was interested in the business of Simon Enterprise.

For leave to be granted, it is necessary that the question posed is a question of law raised in the course of the appeal to the High Court and is of public interest. I have in delivering the judgment of this court in *A. Ragunathan v. Pendakwa Raya* (F.C. Cr. Appln. No. 5/81) dealt with the test for determining what amounts to a question meeting the requisite factors for the purposes of s. 66 of the Courts of Judicature Act, and I made it clear that if it is a mere question of principles, which in the matter before us only involves the construction of certain words in a statutory provision in their application to the facts of the case, the question would not be a question of law of public interest.

In the instant application we are of the view that the construction of the words in question in the statutory provision for which leave is sought under s. 66 of the Courts of Judicature Act would be a matter of applying the relevant statutory provision to the factual circumstances of any particular case. The learned Judge has in fact dealt with the facts of this particular case and applying the statutory provision thereto came to the conclusion that he did. As I have said, these must of necessity vary from case to case according to the facts and we do not therefore think that the question raised before us is accordingly one of law of public interest.

We therefore dismiss this application.

Also found at [1982] CLJ 400